ZUBIR MUSTAFA

v.

TENAGA NASIONAL BHD & ANOR

COURT OF APPEAL, PUTRAJAYA
ABDUL KADIR SULAIMAN JCA
ABDUL AZIZ MOHAMAD JCA
MOHD GHAZALI YUSOFF JCA
[CIVIL APPEAL NO: K-01-58-1997]
18 JANUARY 2005

LAND LAW: *Charge - Order for sale - Property held under land office title - Whether cause to the contrary shown*

LAND LAW: *Charge - Transfer of - Rights of chargee transferred to successor company pursuant to statutory vesting - Whether mandatory for registration of transfer of rights under charge pursuant to statutory vesting - National Land Code, ss. 414, 415*

LAND LAW: *Charge - Transfer of - Rights of chargee transferred to successor company pursuant to statutory vesting - Successor not registered as chargee - Whether successor had locus standi to enforce charge - Whether fresh charge necessary*

LAND LAW: *Charge - Order for sale - Application for - Successor company acquiring rights under charge pursuant to statutory vesting - Successor company only registered as chargee after order for sale obtained - Whether fatal to such application - Whether order for sale regular*

The appellant was an employee of the then National Electricity Board ('the Board'). On 4 September 1984, the appellant charged a piece of land in favour of the Board ('the charged property') as security for a housing loan. On 18 May 1987 the appellant resigned from the Board. He later defaulted in his repayments towards the loan. On 1 September 1990, the Electricity Supply (Successor Company) Act 1990 (Act 448) came into force ('the Act'). The Act was promulgated to *inter alia* provide for the vesting of property, rights and liabilities of the Board in a successor company. Section 3 of the Act provided for the transfer of all property, rights and liabilities to which the Board was entitled to a successor company. By virtue of a transfer date order dated 1 September 1990 made by the Minister pursuant to s. 3(1) of the Act, all property, rights and liabilities to which the Board was entitled to or subject

to, were transferred to the first respondent – Tenaga Nasional Bhd, the successor company. Despite several reminders and service of relevant notices by the first respondent and/or its solicitors, no payment was made by the appellant. Thus on 5 June 1992, the first respondent applied for an order for sale of the charged property from the second respondent pursuant to s. 260 of the National Land Code ('the Code'). On 27 January 1993 the second respondent granted the order for sale. The appellant subsequently applied *inter alia* to set aside the order for sale and vacate the auction date. His application was however dismissed by the High Court. On appeal to the Court of Appeal, counsel argued the following: (i) the judge erred in deciding that the first respondent was not required to register the statutory vesting in order to commence proceedings for the order for sale under the Code; (ii) since the first respondent had not registered the statutory vesting at the time the order for sale was applied for, it had no *locus standi* to commence any proceedings under the Code; and (iii) although the Act vested all rights and liabilities of the Board in the first respondent, it had nevertheless to comply with the Code if it sought to obtain any remedy thereunder.

Held (dismissing the appeal)
Per Mohd Ghazali Yusoff & Abdul Kadir Sulaiman JJCA (majority):

[1] The observations of the Federal Court in *Low Lee Lian v. Ban Hin Lee Bank Bhd* would apply to applications for orders of sale made pursuant to s. 263(1) of the Code. The appellant in the instant case applied for the order for sale to be set aside but he had not shown any cause to the contrary within the contemplation of s. 263(1) of the Code. As such the second respondent was obliged to make the order for sale. (p 67 c)

[2] The fact that the first respondent had chosen not to register its interest in the said property pursuant to s. 415 of the Code was insufficient to defeat its right under the charge to apply for an order for sale. (p 67 d)

[3] The Act clearly vested in the first respondent all rights under the charge. The appellant's complaint that the first respondent registered itself as chargee in place of the Board only after the order for sale was granted could not be fatal to the order. It was clear from the Act and the Code that registration of a statutory vesting is not a mandatory requirement. (pp 67 f-g & 68 a)

[4] Statutory vesting as defined under s. 414 of the Code is a vesting effected by any written law. Such vesting takes effect irrespective of whether or not any instrument of transfer or other instrument is required to be

presented to the registrar in order to give effect to such vesting, or which has the effect of vesting in the transferee any other right or entitlement whatsoever in relation to any land which was the right or entitlement of the transferor. In the instant case, statutory vesting was involved and hence s. 415 of the Code would apply. By virtue of s. 415 of the Code, it was not mandatory for the transfer of rights under the charge from the Board to the first respondent to be registered. Further, there was no requirement for a fresh charge to be executed. (p 68 b & h)

Per Abdul Aziz Mohamad JCA (dissenting):

[1] The first respondent, despite the statutory vesting, would not become the registered chargee of the land unless the statutory vesting was registered under s. 415 of the Code. Although the section is worded not in mandatory terms but in enabling terms, the effect of a failure to register is that the first respondent would not be the registered chargee of the land for the purposes of the Code. (p 56 h)

[2] The first respondent had not applied for registration of the statutory vesting when it applied for and obtained the order for sale on 27 January 1993. The first respondent therefore had no *locus standi* to apply for the order for sale. (pp 57 a & 58 c-d)

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu bekerja dengan apa yang dahulunya dikenali sebagai Lembaga Letrik Negara ('Lembaga'). Pada 4 September 1984, perayu menggadai sebidang tanah kepada Lembaga ('tanah yang digadai') sebagai jaminan untuk suatu pinjaman perumahan. Pada 18 Mei 1987 perayu berhenti bekerja dengan Lembaga. Perayu kemudian gagal membayar balik pinjaman. Pada 1 September 1990, Akta Bekalan Elektrik (Syarikat Pengganti) 1990 ('Akta') mula berkuatkuasa. Akta digubal dengan tujuan untuk membolehkan harta-harta, hak-hak dan liabiliti-liabiliti diletakhak dari Lembaga kepada sebuah syarikat pengganti. Seksyen 3 Akta membuat peruntukan tentang pemindahan harta-harta, hak dan liabiliti yang Lembaga berhak atau yang tertakluk kepada syarikat pengganti. Berdasarkan kepada Perintah Tarikh Pemindahan bertarikh 1 September 1990 yang dibuat oleh Menteri di bawah s. 3(1) Akta, kesemua harta, hak dan liabiliti yang Lembaga berhak atau tertakluk adalah dipindah kepada responden pertama – Tenaga Nasional Berhad, syarikat pengganti. Walaupun beberapa peringatan dan notis mengenai pembayaran balik pinjaman dihantar oleh responden pertama/peguam mereka, tiada bayaran telah dibuat oleh perayu.

Dengan itu, pada 5 Jun 1992, responden pertama memohon kepada responden kedua untuk perintah jualan bagi tanah yang digadai di bawah s. 260 Kanun Tanah Negara ('Kanun'). Pada 27 Januari 1993 responden kedua membenarkan permohonan dan mengeluarkan perintah jualan. Perayu kemudian memohon untuk antara lain untuk mengenepikan perintah jualan dan mengosongkan tarikh lelongan. Permohonan perayu bagaimanapun ditolak oleh Mahkamah Tinggi. Semasa rayuan ke Mahkamah rayuan, peguam perayu berhujah seperti berikut: (i) hakim khilaf apabila memutuskan bahawa responden pertama tidak wajib mendaftarkan perintah letakhak statutori sebelum memulakan prosiding penjualan di bawah Kanun; (ii) oleh kerana responden pertama tidak mendaftar perintah letakhak statutori semasa membuat permohonan untuk perintah jualan, ia tidak mempunyai locus standi untuk memulakan prosiding di bawah Kanun; dan (iii) walaupun Akta meletakhak semua hak dan liabiliti Lembaga kepada responden pertama, responden pertama masih perlu mematuhi Kanun jika ia berhasrat mendapatkan remedi-remedi di bawahnya.

Diputuskan (menolak rayuan)
Oleh Mohd Ghazali Yusoff & Abdul Kadir Sulaiman HHMR (majoriti):

[1] Pandangan Mahkamah Persekutuan di dalam *Low Lee Lian v. Ban Hin Lee Bank Bhd* [1997] 2 CLJ 36 adalah terpakai kepada permohonan-permohonan untuk perintah jualan yang dibuat di bawah s. 263(1) Kanun. Perayu dalam kes ini memohon untuk mengenepikan perintah jualan tetapi beliau tindak menunjukkan apa-apa kausa sebaliknya seperti yang dikehendaki s. 263(1) Kanun. Oleh itu responden kedua mempunyai kewajipan untuk membenarkan perintah jualan.

[2] Fakta bahawa responden pertama memilih untuk tidak mendaftarkan kepentingannya di dalam hartanah tersebut di bawah s. 415 Kanun tidak mencukupi untuk mengalahkan haknya di bawah gadaian untuk memohon perintah jualan.

[3] Akta dengan jelas meletakhak ke atas responden pertama kesemua hak-hak di bawah gadaian. Aduan perayu bahawa responden pertama hanya mendaftarkan dirinya sebagai penerima gadaian mengganti Lembaga selepas pemberian perintah jualan tidak memudaratkan perintah tersebut. Adalah jelas dari Akta dan Kanun bahawa pendaftaran suatu perletakanhak statutori bukan suatu keperluan mandatori.

[4] Perletakanhak statutori ditakrif oleh s. 414 Kanun sebagai perletakanhak yang diberi kesan oleh mana-mana undang-undang bertulis. Perletakanhak sedemikian berlaku tidak kira sama ada suatu intrumen pindahmilik atau

lain-lain instrumen perlu diserah kepada Pendaftar bagi memberi kesan kepada perletakanhak tersebut. Ia berkesan meletakhak kepada penerima apa jua hak ke atas tanah yang menjadi hak atau dimiliki sebelumnya oleh pemindah. Dalam kes semasa, yang tgerlibat adalah perletakanhak statutori dan kerana itu s. 415 Kanun adalah terpakai. Berdasarkan s. 415, pemindahan hak-hak di bawah gadaian dari Lembaga kepada responden pertama tidaklah mandatori untuk didaftarkan. Lagipun, tiada keperluan untuk melaksanakan suatu gadaian baru.

Oleh Abdul Aziz Mohamad HMR (menentang):

[1] Walaupun dengan perletakanhak statutori, responden pertama tidak akan menjadi penerima gadaian berdaftar tanah yang digadai kecuali perletakanhak statutori tersebut didaftar di bawah s. 415 Kanun. Walaupun perkataan-perkataan di s. 425 tidak bersifat mandatori dan hanya bersifat membolehkan, kesan kepada kegagalan mendaftar adalah bahawa responden pertama tidak akan menjadi penerima gadaian tanah bagi maksud Kanun.

[2] Responden pertama tidak memohon untuk mendaftar perletakanhak statutori semasa memohon dan memperoleh perintah jualan pada 27 Januari 1993. Responden pertama dengan itu tidak mempunyai *locus standi* untuk memohon perintah jualan.

Case(s) referred to:
Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1997] 1 CLJ 636 FC ***(refd)***
Low Lee Lian v. Ban Hin Lee Bank Bhd [1997] 2 CLJ 36 SC ***(refd)***
Oriental Bank v. Chup Seng Restaurant (Butterworth) Sdn Bhd [1990] 2 CLJ 711; [1990] 2 CLJ (Rep) 589 HC ***(refd)***

Legislation referred to:
Electricity Supply (Successor Company) Act 1990, s. 3
National Land Code, ss. 260(2), 261, 263(1), 414, 415(1)(a)

For the appellant - Mayandi (Ahmad Farid with him); M/s Ahmad Farid & Assoc
For the 1st respondent - Azham Ahmad; M/s Azham, Halim & Nor Asiah
For the 2nd respondent - Aziah Ali SLA

[Appeal from High Court, Alor Setar; Originating Motion No: 25-36-96]

Reported by Andrew Christopher Simon

JUDGMENT

Abdul Aziz Mohamad JCA:

The facts of this case, and the statutory provisions that have a bearing on the case, have been set out by my learned brother, Mohd Ghazali Mohd Yusoff, JCA. So I shall not set them out *in extenso*.

The National Electricity Board ("NEB") were at all material times the registered chargee of the appellant's land. As registered chargee, they had a registered interest in the land. Section 414 of the National Land Code ("the Code") defines "registered interest in land" as "any land or any interest in land … registered in the name of the transferor, and in respect of which a transfer is capable of being effected under Part Fourteen". There is no dispute that the NEB's registered interest in the land as chargee had, on 1 September 1990, by virtue of subsection (1) of s. 3 of the Electricity Supply (Successor Company) Act 1990 (Act 448) and the Transfer Date Order 1990 made under that subsection, become the interest of the Tenaga Nasional Berhad ("TNB"), the first respondents. On that date the TNB were vested with the NEB's registered interest in the land as chargee. It is not disputed that there was, therefore, a "statutory vesting" of that interest in the TNB by virtue of para. (a) of the definition of that term in s. 414 of the Code, with the NEB as "transferor" and the TNB as "transferee". Section 414 of the Code defines "transferor" as "the person from whom a statutory vesting is effected in favour of a transferee", and "transferee" as "the person in whose favour a statutory vesting is effected". Section 415(1)(a) enabled the TNB as transferee to apply for the statutory vesting to be registered. The application would be "for a statutory vesting of a registered interest in land held by the transferor to be registered in the name of the transferee". If the TNB had applied, the registrar, according to subsection (2) of s. 415, would first have to be satisfied that the NEB's registered interest had been vested in the TNB under Act 448. Then he would, under para. (b), "make a memorial on the register document of title to the effect that the (NEB's registered interest in the land) has been vested in the (TNB)", and make a memorial to the same effect on the issue document of title.

It is, therefore, clear that for the purposes of the Code the TNB, despite the statutory vesting, would not become the registered chargee of the land unless the statutory vesting is registered under s. 415. Although the section is worded not in mandatory terms but in enabling terms, the effect of failure to register is that TNB would not be the registered chargee of the land for the purposes of the Code. In that sense, registration of the statutory vesting is mandatory.

The TNB had not applied for registration of the statutory vesting when they applied for the order for sale of the land and obtained it on 27 January 1993. They were therefore not the registered chargee of the land for the purposes of the Code. The question in this appeal is whether they had *locus standi* to apply for the order for sale. If they did not have it, the order for sale ought not to have been made by the Land Administrator, the second respondent, and should have been set aside by the learned judge. Absence of *locus standi* would be "the existence of cause to the contrary" for the purposes of s. 263(1) of the Code. It would come within the second category of causes to the contrary laid down by the Federal Court in *Low Lee Lian v. Ban Hin Lee Bank Bhd* [1997] 2 CLJ 36, namely, failure of the chargee "to meet the conditions precedent for the making of an application for an order for sale". Although the Federal Court spoke of failure as specifically that of the chargee, I would take the statement as also speaking alternatively of failure of the applicant. One of the conditions precedent is that, as is plain from s. 260(2), the application must be one "by a chargee". If the TNB were not the "chargee" when they applied for the order for sale, the condition precedent for making the application was not met.

It is the appellant's case that the TNB had no locus standi to apply for the order for sale because they were not the registered chargee of the land. His counsel argued that since "charge" is defined in s. 5 of the Code as "a registered charge", it follows that "chargor" and "chargee" in the Code, including "chargee" in s. 260(2), must mean registered chargor and registered chargee. Since the TNB were not a registered chargee, they were not qualified to apply under s. 260(2). The appellant's counsel also cited *Oriental Bank v. Chup Seng Restaurant (Butterworth) Sdn Bhd* [1990] 2 CLJ 711; [1990] 2 CLJ (Rep) 589 to support his submission that "chargee" in the Code means registered chargee. Although the case differs from the present in the facts and did not involve statutory vesting, of relevance to the submission of the appellant's counsel are the statements of Mohamed Dzaiddin J (as he then was) "(the Code) adheres strictly to the principle of registration and recognizes only parties who are registered under the Code" and that "the Code recognizes only registered chargees".

The TNB's counsel in his oral submission in this appeal merely argued that the registration of a statutory vesting under s. 415 of the Code is not mandatory and that the *Oriental Bank* case concerned a different situation from that in the present case. In view of what I have said about the effect of the TNB's failure to register the statutory vesting and about the case, the argument is insufficient to meet the appellant's argument.

The learned State Legal Adviser, who represented the Land Administrator, seems by her written submission to accept that for the TNB to have the *locus standi* to apply for an order for sale they must be the registered chargee. The thrust of her argument is delivered in these words in para. 12 of her written submission: "By operation of law on (1 September 1990) the (TNB) became the registered chargee in place of NEB". As I said, in my opinion the TNB were not a registered chargee when they applied for and obtained the order for sale because the statutory vesting in their favour had not been registered under s. 415 of the Code.

I would decide this appeal on the basis that the respondents have failed to overcome the appellant's argument which, in any case, I find sound in law. The word "chargee" in s. 260(2) must mean registered chargee and the TNB were not a registered chargee. They therefore had no *locus standi*. The respondents have not attempted to assert, or presented grounds for asserting, that even though the TNB were not the registered chargee they were still qualified to apply for an order for sale. I would therefore allow the appeal and order that the order for sale be set aside.

Mohd Ghazali Yusoff JCA:

The appellant was the registered owner of a piece of land held under PM No. 360, Lot No. 5196, Mukim Alor Malai, Daerah Kota Setar, Kedah ("the said property"). Prior to 18 May 1987 the appellant was an employee of the National Electricity Board ("the Board"). The Board was established under the Electricity Act 1949 (Revised - 1973) which has since been repealed by the Electricity Supply Act 1990 (Act 447).

Sometime in 1984, whilst being an employee of the Board, the appellant purchased the said property. On 4 September 1984 the appellant charged the said property to the Board upon obtaining from the Board a housing loan facility of RM138,113 carrying a 4% interest per annum on monthly rest ("the said facility"). On 18 May 1987 the appellant resigned from the Board. He however defaulted in his repayments towards the said facility.

On 1 September 1990, the Electricity Supply (Successor Company) Act 1990 (Act 448) came into force ("the Act"). The Act was promulgated to provide for the following:

(i) the vesting of property, rights and liabilities of the Board in a company;

(ii) to make financial arrangements for that company;

(iii) to provide for matters relating to staff; and

(iv) for other matters connected therewith.

Section 3 of the Act, entitled "Vesting of property, etc., of the Board in the successor company" reads:

> (1) The Minister may, by order published in the Gazette, appoint a transfer date and on such date, all property, rights and liabilities to which the Board was entitled or subject to, immediately before that date shall become by virtue of this section property, rights and liabilities of the successor company.
>
> (2) For the avoidance of doubt:
>
> (a) any reference to property to which the Board was entitled to, is a reference to land and choses-in-action of the Board whether situated in Malaysia or elsewhere; and
>
> (b) any reference to rights and liabilities to which the Board was entitled or subject to, is a reference to rights which the Board is entitled to or, as the case may be, liabilities to which the Board is subject to, whether under the laws of Malaysia or any country outside Malaysia and includes rights and liabilities arising under loans raised.
>
> (3) Every chose-in-action transferred by subsection (1) to the successor company may, after the transfer date, be sued on, recovered or enforced by the company in its own name and it shall not be necessary for the company or the Board to give notice to the person bound by the chose-in-action of the transfer effected by the subsection.
>
> (4) Every right and liability transferred by subsection (1) to the successor company may, on and after the transfer date, be sued on, recovered or enforced by or against the company in it own name and it shall not be necessary for the company or the Board to give notice to the person whose right or liability is transferred by this section of such transfer.
>
> (5) In the case of rights and liabilities arising under any loans which vest in the company on the transfer date, the company may enter into such arrangements or agreements over such rights and liabilities with the Government of Malaysia or any third party.

By virtue of a Transfer Date Order dated 1 September 1990 made by the Minister pursuant to s. 3(1) of the Act, all property, rights and liabilities to which the Board was entitled to or subject to, were transferred to the 1st respondent, *viz.*, Tenaga Nasional Berhad, the successor company. The Transfer Date Order reads:

ELECTRICITY SUPPLY (SUCCESSOR COMPANY) ACT 1990
TRANSFER DATE ORDER 1990

In exercise of the powers conferred by section 3(1) of the Electricity Supply (Successor Company) Act 1990, the Minister makes the following order:

1. This Order may be cited as the Transfer Date Order 1990 and shall come into force of the 1st September 1990.

2. The transfer date on which all property, rights and liabilities to which the National Electricity Board of the States of Malaya was entitled or subject to, are transferred to Tenaga Nasional Berhad, is 1st September 1990.

Made the 30th August 1990.

[(S) 15/223/353/22/1-1: P.N. (PU2) 487.]

DATO' SERI S. SAMY VELLU
Minister of Energy,
Telecommunications and Posts.

By letter dated 12 March 1992, the 1st respondent's solicitors informed the appellant that as at 31 January 1992 the total amount outstanding under the said facility was RM233,397.77 and henceforth demanded payment of the said sum. By notice dated 20 April 1992 issued to the appellant, made pursuant to s. 254 of the National Land Code ("the Code"), the 1st respondent demanded the said outstanding sum of RM233,397.77 from the appellant. Section 254 of the Code entitled "Service of default notice, and effect thereof" reads:

(1) Where, in the case of any charge, any such breach of agreement as is mentioned in subsection (1) of section 235 has been continued for a period of at least one month or such alternative period as may be specified in the charge, the chargee may serve on the chargor a notice in Form 16D:

(a) specifying the breach in question;

(b) requiring it to be remedied within one month of the date on which the notice is served, or such alternative period as may be specified in the charge; and

(c) warning the chargor that, if the notice is not complied with, he will take proceedings to obtain an order for sale.

(2) Where, after the service of any such notice, the charged land or lease becomes vested in any other person or body, the notice shall be valid and effectual against that person or body as it was against the person or body on whom it was served.

(3) If at the expiry of the period specified in any such notice the breach in question has not been remedied:

(a) the whole sum secured by the charge shall (if it has not already done so) becomes due and payable to the chargee; and

(b) the chargee may apply for an order for sale in accordance with the following provisions of this Chapter:

Provided that paragraph (a) shall not apply to any charge to secure the payment of any annuity or other periodic sum.

As no payment was forthcoming, on 5 June 1992, the 1st respondent applied for an order for sale from the 2nd respondent pursuant to s. 260 of the Code. Section 260 of the Code entitled "Application to Land Administrator for order for sale" reads:

(1) This section applies to land held under:

(a) Land Office title;

(b) the form of qualified title corresponding to Land Office title; or

(c) subsidiary title,

and to the whole of any undivided share in, or any lease, of any such land.

(2) Any application for an order for sale under this Chapter by a chargee of any such land or lease shall be made to the Land Administrator in Form 16G.

On 27 January 1993 the 2nd respondent granted the order for sale.

On 6 August 1996 the appellant filed an originating summons and prayed for the following orders:

(i) that the order for sale dated 27 January 1993 be set aside;

(ii) that the public auction of the said property set down for 20 August 1996 be vacated;

(iii) alternatively, a declaration that the order for sale and the public auction is invalid and null and void;

(iv) any other order that the Court deems fit; and

(v) costs.

On 15 May 1997 the learned judge, High Court, Alor Setar dismissed the orders prayed for and against that decision, the appellant appealed to this court.

Before the learned judge, the appellant's counsel argued:

(i) that the 1st respondent has no *locus standi* to apply for an order for sale under s. 260 of the Code as the said property was charged to the Board and not to the 1st respondent;

(ii) that the Transfer Date Order did not automatically vest any right or entitlement under the charge to the 1st respondent to enable it to apply for an order for sale;

(iii) that the 1st respondent had not complied with the requirements as to registration of statutory vesting of its interest in the said property under s. 415 of the Code when it applied for the order for sale;

(iv) that the 1st respondent had registered its interest in the said property only on 5 October 1996 whereas the order for sale was granted on 27 January 1993.

Before us, the appellant canvassed the following arguments:

(a) that the learned judge erred in deciding that the 1st respondent was not required to register the statutory vesting in order to commence proceedings for the order for sale under the Code;

(b) that for the 1st respondent to avail themselves of such remedy, it must be a registered chargee; as it had not registered the statutory vesting at the time the order for sale was applied for, it had no locus standi to commence any proceedings under the Code;

(c) that although the Act vests all rights and liabilities of the Board to the 1st respondent, the latter must comply with the Code if it sought to obtain any remedy thereunder.

What is statutory vesting? Section 414 of the Code provides as follows:

"statutory vesting" means a vesting effected by any written law:

(a) of any registered interest in land or any registrable interest in land, whether or not under the provision effecting such vesting any instrument of transfer or any other instrument, whether specifically described or not, is required to be presented to the registrar in order to give effect to such vesting; or

(b) which has the effect of vesting in the transferee any other right or entitlement whatsoever in relation to any land which was the right or entitlement of the transferor,

regardless of the words or expressions used in the written law in relation to such vesting, and regardless whether or not such words or expressions include the word "vesting" or "transfer";

Section 415 of the Code entitled "Application for registration of a statutory vesting of a registered or registrable interest in land" reads:

(1) A transferee, or a person lawfully entitled to do so on his behalf, may apply to the Registrar:

(a) in Form 30A for statutory vesting of a registered interest in land held by the transferor to be registered in the name of the transferee; or

(b) in Form 30B for a statutory vesting of a registrable interest in land held by the transferor to be registered in the name of the transferee.

(2) Where the Registrar is satisfied that the registered interest in land in respect of which the application under paragraph (a) of subsection (1) is made has been vested in the transferee under the written law specified in the application, the Registrar shall, upon the presentation of the application:

(a) ... ;

(b) in any other case:

(i) make a memorial on the register document of title to the effect that the registered interest in land to which the application relates has been vested in the transferee; and

(ii) after making a memorial to the same effect on the issue document of title, transmit the issue document of title to the transferee.

(3) Where the Registrar is satisfied that the registrable interest in land in respect of which the application under paragraph (b) of subsection (1) is made has been vested in the transferee under the written law specified in the application, the Registrar shall, upon the presentation of the application register the said registrable interest in land in the name of the transferee.

(4) The registration of the registered interest in land or the registrable interest in land, as the case may be, in the name of the transferee shall be effected under subsection (2) or (3), notwithstanding anything inconsistent therewith, or contrary thereto, contained in Part Fourteen.

The learned judge was of the view that s. 415 of the Code is not a mandatory provision. In relation to this, he referred to *"Tenure and Land Dealings in the Malay States"* by David SY Wong where the learned writer said (at p. 314):

(f) Statutory Vesting:

The Code also contains provisions relating to statutory vesting of land or an interest in land in a public authority to the effect that where the operative written law does not provide for the vesting to be registered or provides that 'no instrument of transfer or other instrument shall be required to be presented to the Registrar in order to give effect to the vesting' the public authority 'may apply' for the vesting to be registered under these provisions in the manner thereby prescribed.

The learned judge was of the view that it is clear that the rights or interest of the Board have been vested in the 1st respondent by the Act and this became effective when the Transfer Date Order was made by the Minister. That being the position, he found that the 1st respondent has the *locus standi* to apply for the order for sale notwithstanding there was no registration of the statutory vesting under the Code in relation to the charge of the said property and as such dismissed the appellant's originating summons with costs.

Section 5 of the Code provides a "charge" means "a registered charge". Section 214(1) of the Code provides, *inter alia*, any charge shall be capable of transfer under the Code. In the instant case, the said property was charged to the Board as a consequence of the granting of the said facility. Thus, it cannot be disputed that the charge is not a registered charge. It is also not disputed that the appellant defaulted in making repayments. Pursuant to s. 260 of the Code the 1st respondent, as chargee of the said property in place of the Board, having taken that position and rightly so as from 1 September 1990 all property, rights and liabilities which the Board was entitled to or subject to have been transferred to its goodself by virtue of the Transfer Date Order,

applied to the 2nd respondent for an order for sale of the said property. Section 261 of the Code provides upon receiving such an application, the Land Administrator, ie, the 2nd respondent shall hold an enquiry. Section 263(1) of the Code reads:

> At the conclusion of any enquiry under section 261, the Land Administrator shall order the sale of the land or lease to which the charge in question relates unless he is satisfied of the existence of cause to the contrary. (emphasis added.)

On 27 January 1993 the 2nd respondent granted the order for sale of the said property. The appellant filed this originating summons and claimed for, *inter alia*, an order that the order for sale dated 27 January 1993 be set aside or alternatively the order for sale is invalid and null and void. The arguments canvassed by the appellant have been discussed above.

Section 256(3) of the Code, which is couched in the same words as s. 263(1) and which applies to registry titles in application to court for order for sale reads:

> On any such application, the Court shall order the sale of the land or lease to which the charge relates unless it is satisfied of the existence of cause to the contrary.

As to what is meant by the words "cause to the contrary" was dealt with by the Federal Court in *Low Lee Lian v. Ban Hin Lee Bank Bhd* [1997] 2 CLJ 36. Gopal Sri Ram JCA, in delivering the judgment of the court said (at pp. 44-46):

> The critical phrase in sub-s (3) of s. 256 to which we have lent emphasis, despite having been the subject of judicial pronouncements, continues to demand the attention of courts. There is no doubt that, upon a plain reading of the subsection, a High Court is entitled to refuse an order for sale of charged property once it is satisfied of the existence of cause to the contrary. But the question then arises: what is meant by 'cause to the contrary'?

In our judgment, 'cause to the contrary' within s. 256(3) may be established only in three categories of cases.

First, it may be taken as settled that a chargor who is able to bring his case within any of the exceptions to the indefeasibility doctrine housed in s. 340 of the Code establishes cause to the contrary. That section provides as follows:

> 340 (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible:

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-s. (2):

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this subsection shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent:

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law.

In other words, a chargor who is able to demonstrate that the charge, the enforcement of which is sought, is defeasible upon one or more of the grounds specified under sub-ss. (2) and (4)(b) above will be held to have established cause to the contrary under s. 256(3). ...

Secondly, a chargor may show cause to the contrary within s. 256(3) of the Code by demonstrating that the chargee has failed to meet the conditions precedent for the making of an application for an order for sale. For example, failure on the part of the chargee to prove the making of a demand or service upon the chargor of a notice in Form 16D would constitute cause to the contrary. So too, where the notice demands sums not lawfully due from the chargee. ...

> Thirdly, a chargor may defeat an application for an order for sale by demonstrating that its grant would be contrary to some rule of law or equity. ...

His Lordship continued at pp. 50 as follows:

> As earlier observed, unless a chargor can bring himself within one of the three categories of cases set out earlier in this judgment, no cause to the contrary would be shown and the court will be obliged to make an order for sale. ...

We are of the view that the observations of the Federal Court in *Low Lee Lian v. Ban Hin Lee Bank Bhd* equally apply to applications for order of sale made pursuant to s. 263(1) of the Code. The appellant in the instant case has applied for the order for sale to be set aside but he has not shown any cause to the contrary within the contemplation of s. 263(1) of the Code. As such we are of the view that under the circumstances the 2nd respondent was obliged to make the order for sale. The fact that the 1st respondent has chosen not to register its interest in the said property pursuant to s. 415 of the Code was insufficient to defeat its right under the charge to apply for an order for sale. The 2nd respondent has granted the order for sale upon the application of the 1st respondent and rightly so. In the exercise of his powers conferred by s. 3(1) of the Act, the Minister ordered that all property, rights and liabilities to which the Board was entitled or subject to be transferred to the 1st respondent. The rights of the Board as chargee in relation to the said property has been transferred to the 1st respondent by virtue of the Transfer Date Order and as from 1 September 1990, the 1st respondent can enforce its rights as chargee including applying for an order for sale once there has been default on the part of the chargor, ie, the appellant. The Act has clearly vested in the 1st respondent all rights under the charge. The 1st respondent may apply pursuant to s. 415 of the Code to register its goodself as chargee in place of the Board and the evidence showed it has done so on 5 October 1996. The appellant complained that the 1st respondent did so only after the order for sale was granted but then we cannot see how that can be fatal. From our reading of the Act and the Code, we would agree with the learned judge that registration of a statutory vesting is not a mandatory requirement. In *Krishnadas a/l Achutan Nair & Ors v. Maniyam a/l Samykano* [1997] 1 CLJ 636, which was cited by learned counsel for the 2nd respondent, Gopal Sri Ram in delivering the judgment of the Federal Court said (at p. 645):

> The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases.

Section 414 of the Code defines statutory vesting. It is a vesting effected by any written law and such vesting takes effect irrespective of whether or not any instrument of transfer or other instrument is required to be presented to the registrar in order to give effect to such vesting, or which has the effect of vesting in the transferee any other right or entitlement whatsoever in relation to any land which was the right or entitlement of the transferor. All rights of the Board under the charge were automatically transferred to the 1st respondent with effect from 1 September 1990. Such rights include the rights of the Board as a registered chargee. By operation of law, on 1 September 1990 the 1st respondent became the registered chargee in place of the Board. As the 1st respondent has been vested with the rights as a registered chargee, we cannot see how it can be argued that the 1st respondent did not have the *locus standi* when it made the application for order for sale. The rights of the Board under the charge has been transferred to the 1st respondent. The Board is no longer the chargee and the 1st respondent has stepped into its shoes by virtue of the Act and the Transfer Date Order. The charge over the said property remains a registered charge. There was no fresh charge to be executed. This was not the case in *Oriental Bank v. Chup Seng Restaurant (Butterworth) Sdn Bhd* [1990] 2 CLJ 711; [1990] 2 CLJ (Rep) 589, referred to by learned counsel for the appellant in his submission. In that case, the plaintiff, a bank had stepped into the shoes of another bank, *viz.*, Citibank NA after it had paid off the latter the full sum owed by the defendants which was secured by a charge. The defendants then went on to execute a fresh charge in favour of the plaintiff which could not be registered. The plaintiff later applied for an order for sale. The application was founded on the plaintiff's claim to be subrogated to the rights of Citibank NA, the registered chargee of the property. The plaintiff's application was dismissed on the grounds that the charge has to be registered before it can enforce its right of foreclosure under the Code. The facts there were clearly different. Furthermore, it was not a case of statutory vesting. In the instant case, it involves statutory vesting and hence the provisions of s. 415 of the Code would apply. That section does not make it mandatory for that transfer of rights under the charge from the Board to the 1st respondent to be registered. Further, there is no requirement of a fresh charge to be executed.

For these reasons, we would dismiss this appeal with costs and order that the deposit be paid to the 1st and 2nd respondents towards the account of taxed costs.

My learned brother, Abdul Kadir Sulaiman, JCA had read the draft and had expressed his agreement thereto.